IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LOD.NO.2426 OF 2004

M/s.Sheelvik Agencies.....Petitioner

Versus

MHADA & Ors.....Respodnents

Mr. I.M. Yusuf i/b. Yusuf & Associates for the Petitioner
Ms. Geta Shastri, A.G.P. for respondents

CORAM: F.I. REBELLO, J.
DATE : 10th September,2004

P.C.:

1. Rule. Heard forthwith. Oral leave granted to the petitioner to substitute the date 20th July, 2004 as 28th July, 2004 wherever it occurs in the petition and also in the prayer clause.

2. The grievance of the petitioner is that it is the respondent No.1 who had made the land available to the petitioner herein and consequently the demand made by the respondent Nos.2 and 3 are without jurisdiction.

3. The respondent No.1 by their communication addressed to the petitioner dated 10th April, 1995 intimated the granting of lease on the terms and conditions set out therein.

One of the conditions was as under:-

> The Agency shall obtain necessary permission from the concerned authorities for storing the L.P.G. cylinders and also will have to comply with relevant rules and regulations applicable in that behalf."

4. Based on this clause it is sought to be pointed out on behalf of the petitioner by learned Counsel that this applies only for permission for L.P.G. cylinders and not to any other permissions including change of user of the land and that when the land was allotted to the petitioner it was presumed that the respondent No.1 had N.A. permission.

5. On behalf of the respondent No.1 after taking instructions it is set out that the land allotted to the petitioner is still assessed for agricultural purpose and yet has not been converted for use for non-agricultural purpose and in these circumstances it was for the petitioner to take necessary steps and apply for change to non-agricultural purpose in terms of the allotment.

6. Another contention advanced on behalf of the petitioner herein is that inspite of the order of this Court dated 17th March, 2004 in Writ Petition No.791 of 2004 and even though the appeal was filed within the time as granted by this Court the appeal was dismissed on the ground of limitation. It is pointed out that the respondents were present before this Court.

. Once that be the case the order of this Court will have to be construed to mean that if the Appeal was filed within 7 days then no objection as to limitation would arise and the Appeal has to be disposed of on merits. There is therefore merit in the submission considering the order of this Court dated 17th June, 2004. The rejection on that count will have to be set aside.

7. The issue whether the land could be used for non-agricultural purpose will be an issue to be considered in Appeal and that can be decided by the 3rd respondent. In the light of that the following order:-

Petition made absolute in terms of prayer clause (b) only to the extent of the order dated 28th July, 2004. The 3rd respondent will hear the Appeal on merits. The 3rd respondent is directed to dispose of the appeal at any rate on or before 30th November, 1994. In the meantime the respondent Nos. 2 and 3 are directed not to proceed in terms of the order of the 2nd respondent.

Authenticated copy be supplied to the parties.

(F.I.REBELLO, J.)